

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 173 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge No

NH SUTHAR

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner
MR MUKESH PATEL, AGP Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 26/12/96

ORAL JUDGEMENT

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1. By this Special Civil Application under Article 226 of the Constitution of India the petitioner has, inter alia, prayed that the order of his reversion dated 28.12.1990 at Annexure-F is illegal and unconstitutional and is passed in violation of principle of natural justice and the same is therefore required to be quashed and set aside and the respondent is required to be directed to treat the said order as null and void and to direct the respondents to treat the petitioner as continued in the post of Deputy Chitnis with all benefits and back wages.

2. It is the case of the petitioner that vide order dated 18th August, 1972, the petitioner was appointed as Junior Clerk in the Office of District Panchayat, Kuchchh subject to the terms and conditions stipulated therein. He was appointed and posted at Office of Development Commissioner, Taluka Panchayat, Rapar and petitioner joined the service as such and was working in the said office.

3. It appears that thereafter the Development Commissioner, Gujarat State, Gandhinagar, vide order at Annexure-B sent the petitioner on deputation w.e.f. 12th of December, 1979 on the post of Clerk, Antyoday Branch. The petitioner was also required to work in Registry Department in the said Antyoday Branch and accordingly the petitioner was sent on deputation.

4. It appears that vide order dated 28th June, 1983, passed by the Development Commissioner, Gujarat State, Gandhinagar, the petitioner was promoted on purely temporary basis to the post of Deputy Chitnis and subject to the terms and conditions stipulated therein, the petitioner started working as Deputy Chitnis. The petitioner was thus thereafter by Order dated 1st October, 1984, produced at Annexure-D, promoted to the post of Deputy Chitnis on regular basis but, also on purely temporary basis. He was promoted on pure vacancy and started working as such as Deputy Chitnis directly

under the Development Commissioner.

5. It appears that the petitioner continued to work on the post of Deputy Chitnis thereafter continuously for a period of six to seven years and vide the impugned Order dated 28th December, 1990 produced at Annexure-F, the petitioner seems to be reverted to the post of Clerk on the ground that he was not entitled to promotion to the post of Deputy Chitnis looking to his seniority in the parent cadre of District Panchayat at Kuchchh - Bhuj and that he was, therefore, reverted to the post of Clerk. In fact, the question arose as to whether the employees who were sent on deputation from various District Panchayats to the Office of the Development Commissioner should be continued for such office or not and accordingly a representation was made to keep permanently in the employment on deputation in the Office in which they were actually working i.e. in the Office of Development Commissioner and accordingly the Development Commissioner addressed letter dated 6th November, 1984 to the petitioner who was working as Deputy Chitnis at Gandhinagar as to whether he was ready and willing to keep his lien in the Office Development Commissioner pursuant to some direction issued by the High Court of Gujarat in Special Civil Application No. 404 of 1977. It appears that vide reply dated 12th April, 1985, the Development Commissioner informed the petitioner that the acceptance of lien by the petitioner in the Office of Development Commissioner was not to be then considered and his option to continue in the Office of Development Commissioner is to be treated as cancelled. It is thus clear that having called for the option as to whether the employee wanted to have his lien in the Office where he was sent on deputation, though option was called for and option was exercised by the petitioner, it was decided not to accept such option. It appears that thereafter some representation was made to the Development Commissioner on 18th June, 1985 by employees of Class-III who were working on deputation to absorb them in the Office of Development Commissioner. The petitioner actually exercised the option once again on 17th June, 1985 and stated that he has lien to work on permanent basis in the office of Development Commissioner subject to the final decision that may be rendered by the High Court in the Letters Patent Appeal which was preferred against the judgment and order of the learned Single Judge in Special Civil Application No. 404 of 1977. It appears that thus the dispute regarding absorption of the petitioner and other employees who were brought to the office of Development Commissioner on deputation basis was not settled and the matter remained

at large. It was during this time that the petitioner came to be reverted to the post of Clerk on the ground that persons senior to him were working in the District Panchayat in lower cadre and the petitioner was not entitled to promotion to the post of Deputy Chitnis and that he was liable to be reverted to the post of Clerk.

6. This petition came to be admitted by the learned Single Judge of this Court and it appears that ad interim relief was granted pursuant to which the petitioner continued in the post of Deputy Chitnis in the cadre of Development Commissioner and petitioner is till today discharging his duties as Deputy Chitnis.

7. In response to the rule issued by the learned Single Judge of this Court, the respondents have appeared and Development Commissioner has filed the affidavit-in reply and has submitted that petitioner is not entitled to continue to work on the post of Deputy Chitnis and that he was liable to be reverted to the post of Clerk. He also denied the case of the petitioner that persons junior to the petitioner were continued while the petitioner was reverted from the post of Deputy Chitnis. He pointed out that the petitioner was originally appointed in the cadre of Kuchchh - Bhuj District Panchayat as Clerk and was thereafter sent on deputation to the Office of the Development Commissioner. The petitioner was thus working on deputation and he was therefore not entitled to be promoted to the post of Deputy Chitnis in the cadre in which he was sent on deputation. It was also submitted that the petitioner has his lien in the cadre of District Panchayat Kuchchh, Bhuj and he cannot claim any right of promotion or right to continue in the Office of Development Commissioner. It was also submitted that the District Development Officer, Kuchchh, Bhuj has also published seniority list of Clerk and wherein the name of the petitioner appeared at Serial No. 93 and, therefore, he was entitled to be considered for promotion in the cadre of District Panchayat, Kuchchh, Bhuj and was not entitled to any promotion in the Office of Development Commissioner. It was pointed out that promotion to the petitioner in the cadre of Development Commissioner was not regular and he has no right to claim promotion to the post of Deputy Chitnis. It was denied that he was promoted to the post of Deputy Chitnis on regular basis since he was brought on deputation to the cadre of Development Commissioner, he cannot claim any right of promotion in the cadre of Development Commissioner. The petitioner was simply appointed as Clerk in the Office of District Panchayat, Kuchchh, Bhuj and, therefore, his claim was not liable to

be included in any cadre in the Office of Development Commissioner. It was submitted that the petitioner was sent on deputation to the Office of the Development Commissioner, he has no right to claim promotional benefits and that he is liable to be reverted to the post of Clerk.

8. It may stated that an attempt was made by the Office of the Development Commissioner to repatriate the petitioner to the cadre of District Development Commissioner, Kuchchh, Bhuj. It is further submitted that in fact the seniority of the petitioner is maintained in the cadre of District Development Officer, Kuchchh, Bhuj. However, when he was sought to be repatriated to the Office of District Development Officer, Kuchchh, Bhuj, he has filed special Civil Application No. 748 of 1987 and has obtained stay against his repatriation and therefore he has not been sent to his parent cadre by the Development Commissioner and thus he has continued to work in the Office of Development Commissioner. It may be stated that the said Special Civil Application filed by the petitioner against his repatriation to the District Panchayat at Kuchh Bhuj being Special Civil Application No. 748 of 1987 is still pending in the Court and the ad interim relief passed in favour of the petitioner is still operating. The petitioner, therefore, cannot be sent back to his parent cadre in any case at this stage and he shall have to be continued in the office of the Development Commissioner.

9. The question which is required to be decided at this stage is as to whether the petitioner who has already been promoted in the cadre of Deputy Chitnis in the Office of Development Commissioner, Gandhinagar, would be reverted to the post of Clerk on the ground that he is working on deputation and that he, therefore, cannot claim any seniority and any promotion to the post of Deputy Chitnis. However, it cannot be forgotten that he was promoted to the post of Deputy Chitnis initially on purely temporary basis and thereafter was permitted to continue to work on the said post of Deputy Chitnis. In fact, his option was also called for and he has opted for working in the cadre of Development Commissioner. Having called for the option, Government, however, did not decide as to whether he should be absorbed in the cadre of Development Commissioner or should be repatriated. The Government did not also insist for early hearing of the Special Civil Application No. 748 of 1987 which is as on date stated to be pending.

10. In view of the aforesaid facts, it is clear that

the petitioner is continued under the order of the Court in the Office of Development Commissioner and he is working as such in the post of Deputy Chitnis till the date of his reversion. It is also not denied that he was promoted to the post of Deputy Chitnis but when it was found that the employees who were working on deputation, it was decided to revert him to the post which he belongs in the office of District Development Officer, Kuchchh, Bhuj. It is in this circumstances that the case of the petitioner is required to be examined.

11. The petitioner is undoubtedly working as Deputy Chitnis initially on temporary basis and thereafter regularly. It is true that he was brought to the office of the Development Commissioner on deputation and that initially he was entitled to continue his lien only in the cadre of District Panchayat, Kuchchh, Bhuj. However, options were invited from the employees and petitioner exercised the option to work in the Office of Development Commissioner. However, the government decided not to take any action on such option and not to decide as to whether such employees should be permitted to continue on deputation or not. The government therefore kept such employees in darkness and did not decide their fate though the employees have clearly given their option to work in the Office of Development Commissioner and have decided not to go back to the cadre of District Panchayat. In this situation, the question shall have to be decided as to whether the petitioner can be reverted from the post of Deputy Chitnis to which he has been regularly promoted in the Office of Development Commissioner, Gandhinagar.

12. It shall have to be kept in mind that the petition filed by the petitioner against his repatriation to the Office of District Panchayat, Kuchchh, Bhuj is still pending and the order of injunction is operating in his favour. The State Government has so far not taken any action for proceeding further with the Special Civil Application. The petitioner therefore continues to work in the cadre of Development Commissioner and in such cadre he has been regularly promoted to the post of Deputy Chitnis. The question is as to whether what happened to the option exercised by him to remain in the Office of Development Commissioner is yet not decided by the Office of the Development Commissioner. It is in this situation that the question is required to be answered.

13. Mr. Mukesh Patel, learned A.G.P. for the

respondents has submitted that the petitioner employee cannot claim any promotion in the cadre of Development Commissioner as he belongs to the cadre of District Panchayat, Kuchchh, Bhuj and he submitted that in fact when he was repatriated to his parent cadre, he has obtained stay from the High Court. It is nodoubt true that the petitioner has obtained stay from the High Court against his repatriation but so long as the petitioner is continued in the cadre of Development Commissioner, he cannot be treated as an employee belonging to the cadre of District Panchayat, Kuchchh, Bhuj. It is also required to be noted that the Office of the Development Commissioner has given to the petitioner promotion to the post of Deputy Chitnis and he has been working on such post continuously. Therefore, till his petition against the repatriation filed as back as 1987 to his parent cadre is not finally heard and decided by this Court, he has a right to continue in the Office of Development Commissioner and on the post of Deputy Chitnis and to perform his duties as such and he cannot be repatriated from the said post. In any case, if any decision was to be taken to revert him from the post of Deputy Chitnis to the post of Clerk, at least, he was required to be heard and afforded reasonable opportunity of being heard. Admittedly, no such opportunity is provided to the petitioner. In fact, the petitioner has opted absorption in the cadre of Development Commissioner pursuant to the option called for from the Office of Development Commissioner. However, the Government did not take any decision on such option and therefore he was entitled to continue in the cadre of Development Commissioner till decision is taken on the option exercised by him. The petitioner could have pointed out that since he was continuing in the cadre of Development Commissioner, he could not be reverted from the regular promotion given to him to the post of Deputy Chitnis. Admittedly, no opportunity was given to the petitioner before the order is passed reverting him to the post of Clerk from the promotional post of Deputy Chitnis to the post of Clerk. Such order is in every respect prejudicial to the interest of the employee who is enjoying the rights over the promotional post. Before passing such order, at least, he was required to be heard. Even otherwise, under the order of stay, he continues to work in the cadre of Development Commissioner and his repatriation to the post of District Panchayat, Kuchchh, Bhuj is stayed by the High Court in the earlier petition filed in the year 1987. In view of the aforesaid clear legal position, the order of reverting the petitioner from the promotional post of Deputy Chitnis to the post of Clerk in the Office of District Panchayat, Kuchchh, Bhuj is

hereby quashed and set aside and it is directed that the petitioner is entitled to continue on the post of Deputy Chitnis till his right is finally decided by this Court in the petition filed by the petitioner being special Civil application No. 748 of 1987.

14. In the result, the petition succeeds to the aforesaid extent. The order of reverting the petitioner from the post of Deputy Chitnis to the post of Clerk is hereby quashed and set aside and the petitioner is ordered to continue and it is directed that the petitioner be continued to work on the post of Deputy Chitnis and he shall be paid the full wages on the said post till appropriate order is passed after decision is rendered in Special Civil Application No. 748 of 1987. Rule is accordingly made absolute to the aforesaid extent only. There shall be no order as to costs.
